IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9430 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORPORATION - Petitioner(s)

Versus

SHANTABEN RAMJIBHAI - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner(s) : 1,
MR CB DASTOOR for Respondent(s) : 1,
MR GM JOSHI for Respondent(s) : 1,
MR RM PARMAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 27/10/2005

CAV JUDGMENT

1.By filing this petition, the petitioner has challenged the judgment and order dated 08.05.1998 passed by the Presiding Officer, Labour Court, Ahmedabad in Recovery

Application No. 2119 of 1991 filed under Section 33-C(2) of the Industrial Disputes Act, 1947 (“the Act” for short).

2. It can be seen from the record that the respondent filed Recovery Application No. 2119 of 1991 before the Labour Court, Ahmedabad and prayed for several benefits on the ground that she was not provided the said benefits for a long period. Ultimately, the Labour Court, by its judgment and order dated 08.05.1998, allowed the recovery application filed by the respondent under Section 33-C(2) and directed the petitioner to pay Rs.67,472/- to the respondent. Being aggrieved and dissatisfied with the said judgment and order dated 08.05.1998, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

3. Heard the learned advocates for the parties and perused the material placed on record.

4. Section 33-C(2) of the Act reads as under :

“2. Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then

the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate government [within a period not exceeding three months].

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit].”

5. Upon perusal of the provisions of Section 33-C(2), it is clear that where any money is due to any workman, a employer under a settlement or an award under the provisions of (Chapter-VA) or (Chapter-VB), the workman himself or any other person authorized by him in writing may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of money due to him and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue. It is required to be noted that this provision, therefore, applies where there is an enforceable existing right to receive a monetary benefit. The right may accrue under

a settlement or award under the Industrial Disputes Act or any of the provisions of Chapter V of the same Act.

6. Admittedly, in the present case, there is no award or settlement under which the benefits claimed by the respondent have already been computed. It is an admitted position that no settlement or award has been arrived at between the parties for the dues claimed by the respondent and, therefore, there is no occasion for the respondent to make an application under Section 33-C(2) of the Act before the Labour Court. The Labour Court can only interpret the award or settlement on which the claim is based which admittedly does not exist in the present case.

7. In this view of the matter, where the very basis of the claim or the entitlement of the workman to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. Under these circumstances, I am of the opinion that the Labour Court has no jurisdiction to entertain the application filed by the respondent.

8. In that view of the matter, the present petition is

required to be allowed. Accordingly, this petition is allowed. The judgment and order dated 08.05.1998 passed by the Presiding Officer, Labour Court, Ahmedabad in Recovery Application No. 2119 of 1991 is hereby quashed and set aside. Rule is made absolute.

(SHARAD D DAVE, J)

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